

United States
Circuit Court of Appeals
For the Ninth Circuit.

JOSEPH O. KOEPFLI, ROLAND P. BISHOP
and WILLIAM T. BISHOP,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record.

UPON PETITION TO REVIEW AN ORDER OF THE UNITED
STATES BOARD OF TAX APPEALS.

FILED

OCT 8 - 1929

PAUL P. O'BRIEN,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

JOSEPH O. KOEPFLI, ROLAND P. BISHOP
and WILLIAM T. BISHOP,
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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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[1*] DOCKET No. 14,006.

JOSEPH O. KOEPFLI, 1366 East 7th Street, Los Angeles, Calif.,

vs.

COMMISSIONER OF INTERNAL REVENUE.

For Taxpayer: RALPH W. SMITH, Esq.; SHERMAN JONES, Esq.

For Commissioner: C. T. BROWN, Esq., A. H. MURRAY, Esq.

DOCKET ENTRIES (JOSEPH O. KOEPFLI).
1926.

April 22. Petition received and filed.

May 1. Copy of petition served on solicitor.

“ 1. Notification of receipt mailed taxpayer.

June 2. Answer filed by Solicitor.

“ 24. Copy of answer served on taxpayer—
Gen. Cal.

1928.

Feb. 20. Hearing set 4-17-28, Los Angeles, Calif.

Mar. 7. Hearing set 4-5-28, Los Angeles, Calif.
Revised notice.

Apr. 11. Hearing had before Mr. Marquette.
Submitted. Briefs due June 15, 1928.

“ 23. Transcript of hearing—4-11 and 12-28
filed.

June 12. Brief filed by G. C.

“ 13. Brief filed by taxpayer.

*Page-number appearing at the top of page of original certified Transcript of Record.

- Oct. 4. Findings of fact and opinion rendered. Mr. Marquette. Judgment will be entered under Rule 50.
- Nov. 8. Notice of settlement filed by G. C.
- “ 10. Hearing date set on settlement, 12-12-28.
- Dec. 12. Hearing had before Mr. Milliken on Rule 50. Not contested. To Mr. Marquette for order.
- “ 17. Order of redetermination entered.
- 1929.
- June 17. Petition for review by U. S. Cir. Ct. of App. (9) with assignments of error filed by taxpayer.
- “ 17. Proof of service filed.
- “ 17. Praecipe filed.
- “ 17. Proof of service filed.
- “ 22. Supplemental praecipe filed by taxpayer.
- July 24. Proof of service of supplemental praecipe filed.
- Aug. 1. Motion to fix amount of bond filed by taxpayer.
- “ 1. Motion to substitute bonds filed by taxpayer.

Now August 9, 1929, the foregoing docket entries certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[2] DOCKET No. 14,007.

ROLAND P. BISHOP, 1366 East 7th Street, Los Angeles, Calif.

vs.

COMMISSIONER OF INTERNAL REVENUE.

For Taxpayer: RALPH W. SMITH, Esq.; SHERMAN JONES, Esq.

For Commissioner: C. T. BROWN, Esq.; A. H. MURRAY, Esq.

DOCKET ENTRIES (ROLAND P. BISHOP).
1926.

April 22. Petition received and filed.

May 1. Copy of petition served on solicitor.

“ 1. Notification of receipt mailed taxpayer.

June 2. Answer filed by Solicitor.

“ 25. Copy of answer served on taxpayer—
Gen. Cal.

1928.

Feb. 20. Hearing set 4-5-28, Los Angeles, Calif.

Apr. 11. Hearing had before Mr. Marquette, submitted. Briefs due June 15, 1928.

“ 23. Transcript of hearing—4-11 and 12-28 filed. See 14,006.

May 18. Transcript of hearing of 4-4-28 filed.

June 12. Brief filed by G. C. See 14,006.

“ 13. Brief filed by taxpayer. See 14,006.

Oct. 4. Findings of fact and opinion rendered. Mr. Marquette. Judgment will be entered under Rule 50.

- Nov. 8. Notice of settlement filed by G. C.
 “ 10. Hearing date set on settlement, 12-12-28.
 Dec. 12. Hearing had before Mr. Milliken on settlement under Rule 50 not contested.
 To Mr. Marquette for order.
 “ 17. Order of redetermination entered.
 1929.
 June 17. Petition for review by U. S. Cir. Ct. of App. (9) with assignments of error filed by taxpayer. See 14,006.
 “ 17. Proof of service filed. See 14,006.
 “ 17. Praecipe filed. See 14,006.
 “ 17. Proof of service filed. See 14,006.
 “ 22. Supplemental praecipe filed by taxpayer. See 14,006.
 July 24. Proof of service of supplemental praecipe filed. See 14,006.
 Aug. 1. Motion to fix amount of bond filed by taxpayer.
 “ 1. Motion to substitute bonds filed by taxpayer.

Now August 9, 1929, the foregoing docket entries certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
 Clerk, U. S. Board of Tax Appeals.

[3] DOCKET No. 14,008.

WILLIAM T. BISHOP, 1366 East 7th Street, Los Angeles, Calif.

vs.

COMMISSIONER OF INTERNAL REVENUE.

For Taxpayer: RALPH W. SMITH, Esq.; SHERMAN JONES, Esq.

For Commissioner: C. T. BROWN, Esq.; A. H. MURRAY, Esq.

DOCKET ENTRIES (WILLIAM T. BISHOP).
1926.

- April 22. Petition received and filed.
May 1. Copy of petition served on solicitor.
“ 1. Notification of receipt mailed taxpayer.
June 2. Answer filed by solicitor.
“ 25. Copy of answer served on taxpayer—
Gen. Cal.

1928.

- Feb. 20. Hearing set 4-5-28, Los Angeles, Calif.
Apr. 11. Hearing had before Mr. Marquette.
Submitted. Briefs due June 15, 1928.
“ 23. Transcript of hearing—4-11 and 12-28,
filed. See 14,006.
May 18. Transcript of hearing of April 4, 1928,
filed. See 14,007.
June 12. Brief filed by G. C. See 14,006.
“ 13. Brief filed by taxpayer. See 14,006.

- Oct. 4. Findings of fact and opinion rendered. Mr. Marquette. Judgment will be entered under Rule 50.
- Nov. 8. Notice of settlement filed by G. C.
- “ 10. Hearing date set on settlement 12-12-28.
- Dec. 12. Hearing had before Mr. Milliken on settlement under Rule 50. Not contested. To Mr. Marquette for order.
- “ 17. Order of redetermination entered.
- 1929.
- June 17. Petition for review by U. S. Cir. Ct. of App. (9) with assignments of error filed by taxpayer. See 14,006.
- “ 17. Proof of service filed. See 14,006.
- “ 17. Praecipe filed. See 14,006.
- “ 17. Proof of service filed. See 14,006.
- ” 22. Supplemental praecipe filed by taxpayer. See 14,006.
- July 24. Proof of service of supplemental praecipe filed. See 14,006.
- Aug. 1. Motion to fix amount of bond filed by taxpayer.
- “ 1. Motion to substitute bonds, filed by taxpayer.

Now August 9, 1929, the foregoing docket entries certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[4] Filed Apr. 22, 1926. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 14,006.

JOSEPH O. KOEPFLI, 1366 East 7th Street,
Los Angeles, Calif.,

Petitioner,

vs.

THE COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION OF JOSEPH O. KOEPFLI.

The above-named taxpayer hereby appeals from the determination of the Commissioner of Internal Revenue set forth in his deficiency letter bearing the symbols IT:PA 1-60 D LPE-103, dated Feb. 23, 1926, and as a basis of his appeal sets forth the following:

(1) The taxpayer is an individual and a member of the partnership of Bishop & Company, with principal place of business at 1366 East 7th Street, Los Angeles, California.

(2) The deficiency letter (a copy of which is attached) is dated February 23, 1926, the date of mailing being unknown to the taxpayer.

(3) The tax in controversy is income tax for the calendar year 1922 and is less than \$10,000.00, to wit, \$9,371.87.

(4) The determination of tax contained in the said deficiency letter is based upon the following errors:

(a) The Commissioner has fixed a value as of March 1, 1913, for certain real property sold by the partnership of Bishop & Company in the year 1922 at \$345,463.54, whereas the actual value of said property on March 1, 1913, was not less than \$466,132.27.

(b) The Commissioner has determined that a taxable profit was realized on the sale of said property equal to \$152,901.39, whereas the actual taxable profit realized in connection with said sale was not in excess of \$10,047.63.

[5] at the rate of 12½% whereas, taxpayer was liable for tax on one-third only of \$10,047.63, representing his distributive share of the capital net gain arising from the sale of said property by the partnership of Bishop & Company, of which he was a member.

(d) Even if the March 1, 1913, value of the property as found by the Commissioner were used as the basis for determining the taxable profit realized on its sale, the correct taxable profit after making adjustment for subsequent improvements and depreciation distributable to the members of the partnership would be \$147,091.04 and taxpayer's distributive share of such profit would be \$49,030.34 instead of \$50,967.13 as found by the Commissioner.

(5) The facts upon which the taxpayer relies as the basis of his appeal are as follows:

(a) The taxpayer is and was during the whole of the taxable year 1922, a member of the partnership of Bishop & Company, having a one-third interest in said partnership.

(b) During the year 1905, the partnership of Bishop & Company acquired 6.24 acres of land known as Leahy's Tract for which it paid \$94,610.-74. During the year 1907, the partnership erected on said land, a concrete building costing \$94,134.-19. Other improvements were added in 1908 and 1909 amounting to \$5,543.73 and \$21.92 respectively.

(c) During the year 1922, Bishop & Company sold the property for a net amount of \$476,179.90.

(d) The land in question contained 273,427 square feet, and on June 27, 1925, it was appraised exclusive of improvements by the Los Angeles Realty Board as of March 1, 1913, at \$382,797.80.

(e) The fair market value of the land, exclusive of the improvements, as of March 1, 1913, was \$382,797.80. The fair value of the improvements on said date was equal to the cost thereof prior to March 1, 1913, or \$99,699.84 and the fair value of land and improvements combined on March 1, 1913, was \$482,497.64.

(f) The cost of improvements made subsequent to March 1, 1913, was \$2,714.18. The depreciation sustained on said improvements for the period from March 1, 1913, to 1921, inclusive, amounted to \$19,-079.55, and the March 1, 1913, value of the improvements plus cost of subsequent additions and less depreciation sustained up to January 1, 1922, was \$83,334.47. The combined sum of said depreciated

value and the March 1, 1913, value of the land was \$466,132.27.

(g) The capital net gain realized by the members of the partnership on the sale of said land and improvements in the year 1922, was the difference between the net selling price of \$476,179.90 and \$466,132.27, or \$10,047.63, and taxpayer's one-third share of said capital net gain was \$3,349.21.

[6] (6) The taxpayer in support of his appeal relies upon the following propositions of law:

(a) A deficiency of income tax, based upon a computation of net income arising from the sale of capital assets acquired prior to March 1, 1913, by a partnership of which a taxpayer is a member where a basis is used other than the actual March 1, 1913, value of the property, is erroneous. (Sec. 202, Revenue Act of 1921.)

(b) In arriving at the fair market value as of March 1, 1913, of capital assets sold, effect should be given to established values of other properties similarly situated and to the opinions of appraisers qualified to determine such value.

WHEREFORE, taxpayer prays that this Board may hear and determine his appeal.

Respectfully submitted,

JOSEPH O. KOEPFLI.

Dated this 17th day of April, 1926.

State of California,
County of Los Angeles,—ss.

Joseph O. Koepfli, of the city of Los Angeles, state and county aforesaid, being first duly sworn,

deposes and says that he is the taxpayer referred to in the foregoing petition; that he has read the petition or has had the same read to him and is familiar with the statements therein contained and that the facts stated are true except such facts as are stated to be upon information and belief and these facts he believes to be true.

JOSEPH O. KOEPFLI.

Subscribed and sworn to before me this 17th day of April, 1926.

[Seal]

C. F. LONGLEY,

Notary Public in and for the County of Los Angeles, State of California.

Respectfully submitted.

CLAUDE I. PARKER,

Atty.

Per FRANK G. BUTTS,

J. P.,

910-912 Investment Bldg., Washington, D. C.

[7] TREASURY DEPARTMENT,

Washington.

Feb. 23, 1926.

Office of

Commissioner of Internal Revenue.

IT:PA-1-60D

LPE-103

Mr. Joseph O. Koepfli,

c/o Bishop and Company,

1366 East 7th St.,

Los Angeles, Calif.

Sir: The determination of your income tax lia-

bility for the years 1920 to 1922, as set forth in office letter dated February 14, 1925, has been changed as the result of a supplemental report, to disclose a deficiency in tax amounting to \$12,081.94, as shown in the attached statement.

In accordance with the provisions of Section 274 of the Revenue Act of 1924, you are allowed 60 days from the date of mailing of this letter within which to file an appeal contesting in whole or in part the correctness of this determination. Any such appeal must be addressed to the United States Board of Tax Appeals, Washington, D. C., and must be mailed in time to reach that Board within the 60-day period.

Where a taxpayer has been given an opportunity to appeal to the Board of Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has appealed and an assessment in accordance with the final decision on such appeal has been made, no claim in abatement in respect of any part of the deficiency will be entertained.

If you acquiesce in this determination and do not desire to file an appeal, you are requested to sign the inclosed agreement consenting to the assessment of the deficiency and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:PA-1-60D; LPE-103. In the event that you acquiesce in a part of the determination,

the agreement should be executed with respect to the items agreed to.

Respectfully,

D. H. BLAIR,
Commissioner.

By C. R. NASH,
Assistant to the Commissioner.

Inclosures:

Statements.

Agreement—Form A.

Form 882.

[8] IT:PA-1-60D

LPE-103

STATEMENT.

In re: Mr. JOSEPH O. KOEPFLI, c/o Bishop and Co., 1366 East 7th St., Los Angeles, Calif.

1920 Deficiency in Tax	\$ 1,314.91
1921	1,395.16
1922	\$ 9,371.87

Total\$12,081.94

On the basis of additional information furnished at a conference held in this office January 6, 1926, and in a supplemental report dated November 13, 1925, the following adjustments have been made in the audit of your returns:

1921.

It has been determined that your distributive interest from Bishop and Company is \$69,791.84 instead of \$71,636.69, as shown by the examining

officer in his original report. This adjustment is due to the allowance of bad debts amounting to \$4,730.67.

Due to an adjustment made in accordance with your contentions the amount of profit realized from desert land sold has been decreased by \$2,246.66.

An amount of \$803.87 has been allowed the partnership, Bishop and Company, for drafting expense amortized over a period of ten years.

1922.

The distributive interest from Bishop and Company for this year has been determined to be \$59,338.94 and capital net gain of \$50,967.13 due to the allowance of bad debts amounting to \$4,529.90.

You are advised that the action of the examining officer in allowing a revised valuation of \$345,463.54 on property sold in connection with the partnership, Bishop and Company, has been sustained inasmuch as an examination of all the facts discloses that this amount more nearly reflects the correct valuation. These adjustments result in the deficiency in tax as indicated above.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district and remittance should then be made to him.

Now August 9, 1929, the foregoing petition certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[9] Filed Jun. 2, 1926. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 14,006.

Appeal of JOSEPH O. KOEPFLI, Los Angeles, Calif.

ANSWER OF JOSEPH O. KOEPFLI.

The Commissioner of Internal Revenue, by his attorney, A. W. Gregg, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

(1) Admits the allegations of Paragraph 1 of the petition.

(2) Admits the allegations of Paragraph 2 of the petition.

(3) Admits the allegations of Paragraph 3 of the petition.

(4) Denies that the Commissioner committed the errors alleged in Paragraph 4 of the petition.

(5) Admits the allegations of subdivisions (a), (b) and (c) of Paragraph 5; admits that the land in question contained 273,427 sq. ft.; denies that said land was appraised, exclusive of improvements, at \$382, 797.80; denies the allegations of subdivisions (e), (f) and (g) of Paragraph 5.

(6) Denies, generally and specifically, each and every allegation in the taxpayer's petition contained not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the taxpayer's appeal be denied.

A. W. GREGG,
General Counsel, Bureau of Internal Revenue.
Of Counsel:

L. C. MITCHELL,
Special Attorney, Bureau of Internal
Revenue.

Now, August 9, 1929, the foregoing answer certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[10] Filed Apr. 22, 1926. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 14,007.

ROLAND P. BISHOP, 1366 East 7th Street, Los Angeles, California,

Petitioner,

vs.

THE COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION OF ROLAND P. BISHOP.

The above-named taxpayer hereby appeals from the determination of the Commissioner of Internal

Revenue set forth in his deficiency letter bearing the symbols IT:PA 1-60D, LPE-103, dated February 23, 1926, and as a basis of his appeal sets forth the following:

(1) The taxpayer is an individual and a member of the partnership of Bishop & Company with principal place of business at 1366 East 7th Street, Los Angeles, California.

(2) The deficiency letter, copy of which is attached, is dated February 23, 1926, the date of mailing being unknown to the taxpayer.

(3) The tax in controversy is income tax for the calendar year 1922 and is less than \$10,000.00, to wit, \$8,147.02.

(4) The determination of tax contained in said deficiency letter is based upon the following errors:

(a) The Commissioner has fixed a value as of March 1, 1913, for certain real property sold by the partnership of Bishop & Company in the year 1922, at \$345,463.54, whereas, the actual value of said property as of March 1, 1913, was not less than \$466,132.27.

(b) The Commissioner has determined that a taxable profit was realized by the members of the partnership of Bishop & Company, on the sale of said property equal to \$152,901.39, whereas, the actual taxable profit realized in connection with said sale was not in excess of \$10,047.63.

(c) The Commissioner has included \$50,967.13 as taxpayer's distributive share of said alleged profit subject to tax as a capital net gain and has

computed a tax on such alleged distributive share [11] at the rate of 12½% whereas, taxpayer was liable for tax on one-third only of \$10,047.63, representing his distributive share of the capital net gain arising from the sale of said property by the partnership of Bishop & Company of which he was a member.

(d) Even if the March 1, 1913, value of the property as found by the Commissioner were used as the basis for determining the taxable profit realized on its sale, the correct taxable profit after making adjustment for subsequent improvements and depreciation distributable to the members of the partnership would be \$147,091.04 and taxpayer's distributive share of such profit would be \$49,030.34 instead of \$50,967.13 as found by the Commissioner.

(5) The facts upon which the taxpayer relies as the basis of his appeal are as follows:

(a) The taxpayer is and was during the whole of the taxable year 1922, a member of the partnership of Bishop & Company, having a one-third interest in said partnership.

(b) During the year 1905, the partnership of Bishop & Company acquired 6.24 acres of land known as Leahy's Tract for which it paid \$94,610.74. During the year 1907, the partnership erected on said land a concrete building costing \$94,134.19. Other improvements were added in 1908 and 1909 amounting to \$5,543.73 and \$21.92 respectively.

(c) During the year 1922, Bishop & Company sold the property for a net amount of \$476,179.90.

(d) The land in question contained 273,427 square feet, and on June 27, 1925, it was appraised exclusive of improvements by the Los Angeles Realty Board as of March 1, 1913, at \$382,797.80.

(e) The fair market value of the land, exclusive of the improvements, as of March 1, 1913, was \$382,797.80. The fair value of the improvements on said date was equal to the cost thereof prior to March 1, 1913, or \$99,699.84 and the fair value of land and improvements combined on March 1, 1913, was \$482,497.64.

(f) The cost of improvements made subsequent to March 1, 1913, was \$2,714.18. The depreciation sustained on said improvements for the period from March 1, 1913 to 1921 inclusive, amounted to \$19,079.55 and the March 1, 1913, value of the improvements plus cost of subsequent additions and less depreciation sustained up to January 1, 1922, was \$83,334.47. The combined sum of said depreciated value and the March 1, 1913, value of the land was \$466,132.27.

(g) The capital net gain realized by the members of the partnership on the sale of said land and improvements in the year 1922, was the difference between the net selling price of \$476,179.90 and \$466,132.27, or \$10,047.63, and taxpayer's one-third share of said capital net gain was \$3,349.21.

[12] (6) The taxpayer in support of his appeal relies upon the following propositions of Law:

(a) A deficiency income tax based upon a computation of net income arising from the sale of capi-

tal assets acquired prior to March 1, 1913, by a partnership of which a taxpayer is a member where a basis is used other than the actual March 1, 1913, value of the property, is erroneous. (Section 202, Revenue Act of 1921.)

(b) In arriving at the fair market value as of March 1, 1913, of capital assets sold, effect should be given to established values of other properties similarly situated and to the opinions of appraisers qualified to determine such value.

WHEREFORE, taxpayer prays that this Board may hear and determine his appeal.

Respectfully submitted,

ROLAND P. BISHOP.

Dated this 17th day of April, 1926.

State of California,

County of Los Angeles,—ss.

Roland P. Bishop, of the city of Los Angeles, state and county aforesaid, being first duly sworn, deposes and says that he is the taxpayer referred to in the foregoing petition; that he has read the petition or has had the same read to him and is familiar with the statements therein contained and that the facts stated are true except such facts as are stated to be upon information and belief and these facts he believes to be true.

ROLAND P. BISHOP.

Subscribed and sworn to before me this 17th day of April, 1926.

[Seal] C. F. LONGLEY,
Notary Public in and for the County of Los Angeles, State of California.

Respectfully submitted.

CLAUDE I. PARKER,
Atty.
Per FRANK G. BUTTS,
J. P.,

910-912 Investment Bldg., Washington, D. C.

[13] TREASURY DEPARTMENT,
Washington.

IT:PA-1-60D.

Feb. 23, 1926.

LPE-103.

Mr. Roland P. Bishop,
c/o Bishop and Co.,
1366 East 7th St.,
Los Angeles, Calif.

Sir: The determination of your income tax liability for the years 1920 to 1922, inclusive, as set forth in office letter dated February 14, 1925, has been changed as a result of a supplemental report, to disclose a deficiency in tax amounting to \$12,457.99 for 1920 and 1922 and an overassessment amounting to \$2,439.85 for 1921, as shown in the attached statement.

In accordance with the provisions of Section 274 of the Revenue Act of 1924, you are allowed 60 days from the date of mailing of this letter within

which to file an appeal contesting in whole or in part the correctness of this determination. Any such appeal must be addressed to the United States Board of Tax Appeals, Washington, D. C., and must be mailed in time to reach that Board within the 60-day period.

Where a taxpayer has been given an opportunity to appeal to the Board of Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has appealed and an assessment in accordance with the final decision on such appeal has been made, no claim in abatement in respect of any part of the deficiency will be entertained.

If you acquiesce in this determination and do not desire to file an appeal, you are requested to sign the inclosed agreement consenting to the assessment of the deficiency and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:PA-1-60D; LPE-103 In the event that you acquiesce in a part of the determination, the agreement should be executed with respect to the items agreed to.

Respectfully,

D. H. BLAIR,
Commissioner,

By (C. R. NASH),
Assistant to the Commissioner.

Inclosures:

Statements.

Agreement—Form A.

Form 882.

[14] STATEMENT.

IT:PA-1-60D.

LPE-103.

In re: Mr. ROLAND P. BISHOP, c/o Bishop and Company, 1366 East 7th Street, Los Angeles, California.

Year.	Deficiency.	Overassessment.
1920	\$ 4,310.97	\$
1921		2,439.85
1922	8,147.02	
	<hr/>	<hr/>
Totals	\$12,457.99	\$ 2,439.85
	<hr/>	<hr/>

On the basis of additional information furnished at a conference held in this office January 6, 1926, and in a supplemental report dated November 13, 1925, the following adjustments have been made in the audit of your returns:

1921.

It has been determined that your distributive interest from Bishop and Company is \$69,791.84 instead of \$71,636.69, as shown by the examining officer in his original report. This adjustment is due to the allowance of bad debts amounting to \$4,730.67.

Due to an adjustment made in accordance with your contentions the amount of profit realized from desert land sold has been decreased by \$2,246.66.

An amount of \$803.87 has been allowed the part-

nership, Bishop and Company, for drafting expense amortized over a period of ten years.

The profit realized from the sale of surface rights has been computed as follows:

Sold surface rights, only 271½	
acres	\$20,625.00
Less: Commissions	1,744.37
	<hr/>
	\$18,880.63
Corrected valuation	13,750.00
	<hr/>
Profit realized	\$ 5,130.63

1922.

The distributive interest from Bishop and Company for this year has been determined to be \$59,338.94 and capital net gain of \$50,967.13 due to the allowance of bad debts amounting to \$4,529.90.

[15] You are advised that the action of the examining officer in allowing a revised valuation of \$345,463.54 on property sold in connection with the partnership, Bishop and Company, has been sustained inasmuch as an examination of all the facts discloses that this amount more nearly reflects the correct valuation. These adjustments result in the deficiency in tax as indicated above.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

The overassessment shown herein will be made the subject of a Certificate of Overassessment which will reach you in due course through the office of

the Collector of Internal Revenue for your district. If the tax in question has not been paid, the amount will be abated by the Collector. If the tax has been paid, the amount of overpayment will first be credited against unpaid income tax for another year or years, and the balance if any, will be refunded by check of the Treasury Department. It will thus be seen that the overassessment does not indicate the amount which will be credited or refunded since a portion may be an assessment which has been entered but not paid.

The appeal referred to on page one applies only to any deficiency in tax set forth herein inasmuch as there is no provision in the Revenue Act of 1924 for appeals on overassessments.

In order to fully protect yourself against the running of the Statute of Limitations with respect to any apparent overassessment in your return due to this adjustment of your husband's return, it is suggested that you immediately file with the Collector of Internal Revenue for your district, a claim on the enclosed Form 843 the basis of which may be as set forth herein.

Now, August 9, 1929, the foregoing petition certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[16] Filed Jun. 2, 1926. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 14,007.

Appeal of ROLAND P. BISHOP, Los Angeles,
California.

ANSWER OF ROLAND P. BISHOP.

The Commissioner of Internal Revenue, by his attorney, A. W. Gregg, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

(1) Admits the allegations of Paragraph 1 of the petition.

(2) Admits the allegations of Paragraph 2 of the petition.

(3) Admits the allegations of Paragraph 3 of the petition.

(4) Denies that the Commissioner committed the errors alleged in Paragraph 4 of the petition.

(5) Admits the allegations of subdivisions (a), (b) and (c) of Paragraph 5; admits that the land in question contained 273,427 sq. ft.; denies that said land was appraised, exclusive of improvements, at \$382,797.80; denies the allegations of subdivisions (e), (f) and (g) of Paragraph 5.

(6) Denies, generally and specifically, each and every allegation in the taxpayer's petition contained not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the taxpayer's appeal be denied.

A. W. GREGG,
General Counsel, Bureau of Internal Revenue.

Of counsel:

L. C. MITCHELL,
Special Attorney, Bureau of Internal
Revenue.

Now August 9, 1929, the foregoing answer certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[17] Filed Apr. 22, 1926. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 14,008.

WILLIAM T. BISHOP, 1366 East 7th Street,
Los Angeles, California,

Petitioner,

vs.

THE COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION OF WILLIAM T. BISHOP.

The above-named taxpayer hereby appeals from the determination of the Commissioner of Internal Revenue set forth in his deficiency letter bearing

the symbols IT: PA: 1-60D, LPE-103, dated February 23, 1926, and as a basis of his appeal sets forth the following:

(1) The taxpayer is an individual and a member of the partnership of Bishop & Company with principal place of business at 1366 East 7th Street, Los Angeles, California.

(2) The deficiency letter, copy of which is attached, is dated February 23, 1926, the date of mailing being unknown to the taxpayer.

(3) The tax in controversy is income tax for the calendar year 1922 and is less than \$10,000.00, to wit, \$8,178.47.

(4) The determination of tax contained in said deficiency letter is based upon the following errors:

(a) The Commissioner has fixed a value as of March 1, 1913, for certain real property sold by the partnership of Bishop & Company in the year 1922, at \$345,463.54, whereas, the actual value of said property as of March 1, 1913, was not less than \$466,132.27.

(b) The Commissioner has determined that a taxable profit was realized by the members of the partnership of Bishop & Company, on the sale of said property equal to \$152,901.39, whereas, the actual taxable profit realized in connection with said sale was not in excess of \$10,047.63.

(c) The Commissioner has included \$50,967.13 as taxpayer's distributive share of said alleged profit subject to tax as a capital net gain and has computed a tax on such alleged distributive share

[18] at the rate of 12½% whereas, taxpayer was liable for tax on one-third only of \$10,047.63 representing his distributive share of the capital net gain arising from the sale of said property by the partnership of Bishop & Company of which he was a member.

(d) Even if the March 1, 1913, value of the property as found by the Commissioner were used as the basis for determining the taxable profit realized on its sale, the correct taxable profit after making adjustment for subsequent improvements and depreciation distributable to the members of the partnership would be \$147,091.04 and taxpayer's distributive share of such profit would be \$49,030.34 instead of \$50,967.13 as found by the Commissioner.

(5) The facts upon which the taxpayer relies as the basis of his appeal are as follows:

(a) The taxpayer is and was during the whole of the taxable year 1922, a member of the partnership of Bishop & Company, having a one-third interest in said partnership.

(b) During the year 1905, the partnership of Bishop & Company acquired 6.24 acres of land known as Leahy's Tract for which it paid \$94,610.74. During the year 1907, the partnership erected on said land a concrete building costing \$94,134.19. Other improvements were added in 1908 and 1909 amounting to \$5,543.73 and \$21.92 respectively.

(c) During the year 1922, Bishop & Company sold the property for a net amount of \$476,179.90.

(d) The land in question contained 273,427 square feet, and on June 27, 1925, it was appraised exclusive of improvements by the Los Angeles Realty Board as of March 1, 1913, at \$382,797.80.

(e) The fair market value of the land, exclusive of the improvements, as of March 1, 1913, was \$382,797.80. The fair value of the improvements on said date was equal to the cost thereof prior to March 1, 1913, or \$99,699.84 and the fair value of land and improvements combined on March 1, 1913, was \$482,497.64.

(f) The cost of improvements made subsequent to March 1, 1913, was \$2,714.18. The depreciation sustained on said improvements for the period from March 1, 1913 to 1921, inclusive, amounted to \$19,079.55 and the March 1, 1913, value of the improvements plus cost of subsequent additions and less depreciation sustained up to January 1, 1922, was \$83,334.47. The combined sum of said depreciated value and the March 1, 1913, value of the land was —\$466,132.27.

(g) The capital net gain realized by the members of the partnership on the sale of said land and improvements in the year 1922, was the difference between the net selling price of \$476,179.90 and \$466,132.27, or \$10,047.63 and taxpayer's one-third share of said capital net gain was \$3,349.21.

[19] (6) The taxpayer in support of his appeal relies upon the following propositions of law:

(a) A deficiency income tax based upon a computation of net income arising from the sale of capital assets acquired prior to March 1, 1913, by

a partnership of which a taxpayer is a member where a basis is used other than the actual March 1, 1913, value of the property, is erroneous. (Section 202, Revenue Act of 1921.)

(b) In arriving at the fair market value as of March 1, 1913, of capital assets sold, effect should be given to established values of other properties similarly situated and to the opinions of appraisers qualified to determine such values.

WHEREFORE, taxpayer prays that this Board may hear and determine his appeal.

Respectfully submitted,

WILLIAM T. BISHOP.

Dated this 17th day of April, 1926.

State of California,
County of Los Angeles,—ss.

William T. Bishop, of the city of Los Angeles, state and county aforesaid, being first duly sworn deposes and says that he is the taxpayer referred to in the foregoing petition; that he has read the petition or has had the same read to him and is familiar with the statements therein contained and that the facts stated are true except such facts as are stated to be upon information and belief and these facts he believes to be true.

WILLIAM T. BISHOP.

Subscribed and sworn to before me this 17th day of April, 1926.

[Seal] C. F. LONGLEY,
Notary Public in and for the County of Los Angeles, State of California.

Respectfully submitted.

CLAUDE I. PARKER,
Atty.

Per FRANK G. BUTTS,
J. P.,

910-912 Investment Bldg., Washington, D. C.

[20] TREASURY DEPARTMENT,
Washington, D. C.

Feb. 23, 1926.

IT:PA-1-60D.

LPE-103.

Mr. William T. Bishop,
c/o Bishop and Company,
1366 East 7th, Street,
Los Angeles, California.

Sir:

The determination of your income tax liability for the years 1919 to 1922, inclusive, as set forth in office letter dated Feb. 14, 1925, has been changed as a result of the supplemental report, to disclose an overassessment of \$547.75 for 1919 and a deficiency in tax for the years 1920, 1921 and 1922 amounting to \$11,959.70, as shown in the attached statement.

In accordance with the provisions of Section 274

of the Revenue Act of 1924, you are allowed 60 days from the date of mailing of this letter within which to file an appeal to the United States Board of Tax Appeals contesting in whole or in part the correctness of this determination.

Where a taxpayer has been given an opportunity to appeal to the United States Board of Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has appealed and an assessment in accordance with the final decision on such appeal has been made, no claim in abatement in respect of any part of the deficiency will be entertained.

If you acquiesce in this determination and do not desire to file an appeal, you are requested to sign the enclosed agreement consenting to the assessment of the deficiency and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:PA-1-60D, LPE-103. In the event that you acquiesce in a part of the determination, the agreement should be executed with respect to the items agreed to.

Respectfully,

D. H. BLAIR,
Commissioner.

By C. R. NASH,
Assistant to the Commissioner.

Enclosures:

Statements.

Agreement—Form A.

[21] IT:PA-1-60D.

LPE-103.

STATEMENT.

Feb. 23, 1926.

In re: Mr. WILLIAM T. BISHOP, c/o Bishop
and Company, 1366 East 7th St., Los An-
geles, California.

	Deficiency in Tax.	Overassessment.
1919		\$547.75
1920	\$ 1,325.06	
1921	2,456.17	
1922	8,178.47	
	<hr/>	
Total	\$11,959.70	

On the basis of additional information furnished at a conference held in this office January 6, 1926, and in a supplemental revenue agent's report dated November 13, 1925, the following adjustments have been made in the audit of your returns:

1919.

The amount of \$1,000.00 representing a loss in connection with the Belmont Monitor Mining Company stock has been allowed as a deduction in 1919 in accordance with the additional information furnished.

This adjustment discloses an overassessment as indicated above.

1920.

It has been determined that your distributive interest from Bishop and Company is \$69,791.84 instead of \$71,636.69 as shown by the examining officer

in his original report. This adjustment resulted from the allowance of bad debts in the amount of \$4,730.67.

Due to an adjustment made in accordance with your contentions the amount of profit realized from desert land sold has been decreased by \$2,246.66.

An amount of \$803.87 has been allowed the partnership, Bishop and Company, for drafting expense amortized over a period of ten days.

These adjustments disclose a deficiency in tax as indicated above.

1922.

The distributive interest from Bishop and Company for this year has been determined to be \$59,338.94 and capital net gain of \$50,967.13 due to the allowance of bad debts amounting to \$4,529.90.

[22] You are advised that the action of the examining officer in allowing a revised valuation of \$345,463.54 on property sold in connection with the partnership, Bishop and Company, has been sustained inasmuch as an examination of all the facts discloses that this amount more nearly reflects the correct valuation.

These adjustments result in the deficiency in tax as indicated above.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district and remittance should then be made to him.

The overassessment shown herein will be made the subject of a Certificate of Overassessment which will reach you in due course through the office of

the Collector of Internal Revenue for your district. If the tax in question has not been paid, the amount will be abated by the Collector. If the tax has been paid, the amount of overpayment will first be credited against unpaid income tax for another year or years and the balance, if any, will be refunded to you by check of the Treasury Department. It will thus be seen that the overassessment does not indicate the amount which will be credited or refunded since a portion of the tax may be an assessment which has been entered but not paid.

The appeal referred to on page one of this letter applies to any deficiency in tax set forth herein inasmuch as the Revenue Act of 1924 does not provide for appeals on overassessments.

Now August 9, 1929, the foregoing petition certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[23] Filed Jun. 2, 1926. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 14,008.

Appeal of WILLIAM T. BISHOP, Los Angeles, Calif.

ANSWER OF WILLIAM T. BISHOP.

The Commissioner of Internal Revenue, by his

attorney A. W. Gregg, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

(1) Admits the allegations of Paragraph 1 of the petition.

(2) Admits the allegations of Paragraph 2 of the petition.

(3) Admits the allegations of Paragraph 3 of the petition.

(4) Denies that the Commissioner committed the errors alleged in Paragraph 4 of the petition.

(5) Admits the allegations of subdivisions (a), (b) and (c) of Paragraph 5; admits that the land in question contained 273,427 sq. ft.; denies that said land was appraised, exclusive of improvements, at \$382,797.80; denies the allegations of subdivisions (e), (f) and (g) of Paragraph 5.

(6) Denies, generally and specifically, each and every allegation in the taxpayer's petition contained not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the taxpayer's appeal be denied.

A. W. GREGG,

General Counsel, Bureau of Internal Revenue.
Of counsel.

L. C. MITCHELL,

Special Attorney, Bureau of Internal
Revenue.

Now August 9, 1929, the foregoing answer certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[24] A true copy. Teste:

[Seal] B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET Nos. 14,006, 14,007, 14,008.

JOSEPH O. KOEPFLI,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ROLAND P. BISHOP,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

WILLIAM T. BISHOP,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

FINDINGS OF FACT AND OPINION.

Promulgated October 4, 1928.

March 1, 1913, value of certain real estate fixed, and determination of respondent overruled.

ROGER W. SMITH, Esq., and SHERMAN JONES, Esq., for the Petitioners.

CLARK T. BROWN, Esq., for the Respondent.

These proceedings are for the redetermination of deficiencies in income taxes asserted by the respondent for the year 1922. The deficiencies amount to \$9,371.87; \$8,147.02 and \$8,178.47, respectively, in the order above named. They arise from the disallowance by the respondent of the petitioner's claim as to the March 1, 1913, value of certain real estate owned by the petitioners and sold by them in 1922.

FINDINGS OF FACT.

The three petitioners were for many years prior to 1922, and all during that year, partners in the firm of Bishop and Company. Each owned a one-third interest. In 1905 they purchased a tract of 6.24 [25] acres of land lying along 8th Street, between Alameda and Lawrence Streets, in the city of Los Angeles, California. The purchase price was \$94,610.74. In 1907 they put up a concrete building on the property at a cost of \$94,134.19. In 1908 and 1909 other improvements were erected amounting to \$5,543.73 and \$21.92, respectively. The land and buildings were sold by the petitioners in 1922

for \$500,000, the net to petitioners being \$476,179.90. Spur lines from two railroads ran to this land and it was the only available tract of any considerable size suitable for manufacturing purposes, and "close in" to the then business center of the city. At the time of its purchase and for some years thereafter, proximity to the business center was very desirable in a manufacturing site. The original purchase price in 1905 was approximately the fair value of the land, and by March 1, 1913, its value without improvements was \$382,797.80. There is no evidence regarding the amount of depreciation upon the buildings.

About the year 1915 the real estate market in Los Angeles went into a bad slump, and no recovery took place for five or six years. By 1922, however, the market had recovered at least its status of March 1, 1913, and by 1923 it reached its peak. But by that time large industrial sites "close in" were not in much demand, as factories had gone further out to get cheaper land.

[26] The contention of the petitioners is, that the March 1, 1913, value of the property sold by them in 1922 was \$466,132.27, and that the net taxable gain was only \$10,047.63. The respondent determined the March 1, 1913, value to be \$345,463.54 resulting in a net taxable gain of \$152,901.39, or \$50,967.13 to each partner. No other questions are presented.

OPINION.

MARQUETTE.—The best evidence of market value is the selling price of property, between one

willing but not compelled to sell, and one willing but not compelled to buy. Measured by that standard, the petitioners paid, in 1905, the then fair market value of the land. This was \$94,610.74. There is no evidence before us as to sales of similar property on or about March 1, 1913. But, as of that date, the Los Angeles Real Estate Board in 1925 appraised the land as having a value of \$382,797.80. This valuation is substantiated by other evidence.

The buildings upon the land in 1913 cost \$94,134.19 and \$5,543.73, respectively. The first was erected during the year 1907 and the second during 1908. Presumably, these buildings were subject to depreciation. It is quite evident that, in fixing a valuation as of March 1, 1913, the respondent did compute some depreciation on these buildings; but how much, we are not advised. There is no evidence to indicate what rate of depreciation was used by the respondent, nor whether that was the correct rate. We only know that the respondent [27] determined the land and buildings had a market value March 1, 1913, of \$345,463.54. This was \$37,334.26 less than the value of the land alone, as disclosed by the evidence.

While it is probable that the buildings had some value on March 1, 1913, the evidence produced fails to touch upon this matter. The petition does contain an allegation as to the March 1, 1913, value of the buildings; but this is flatly denied in the answer. The burden of proof was upon the taxpayer and he has failed to sustain it. In recomputing the taxes, therefore, the rate of depreciation of the

buildings, already used by the respondent, will stand as correct.

The amount of taxable gain resulting from the same of this property should be recomputed, based upon a value of \$382,797.80 for the land plus the depreciated value of the buildings, all as of March 1, 1913.

Judgment will be entered under Rule 50.

Now August 9, 1929, the foregoing findings of fact and opinion certified from the record as a true copy.

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[28] United States Board of Tax Appeals.

DOCKET No. 14,006.

JOSEPH O. KOEPFLI,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ORDER REDETERMINING DEFICIENCY
(JOSEPH O. KOEPFLI).

Pursuant to the decision of the Board promulgated October 4, 1928, the respondent having on November 8, 1928, filed a proposed redetermination of the deficiency herein and the same having been called for hearing on December 12, 1928, pursuant

to notice thereof to the petitioner and no objection having been made thereto, it is

ORDERED AND DECIDED, upon redetermination, that the petitioner's deficiency in tax for the year 1922 is \$3,890.38.

JOHN J. MARQUETTE,

JOHN J. MARQUETTE,

Member, United States Board of Tax Appeals.

Entered Dec. 17, 1928.

A true copy: Teste.

B. D. GAMBLE,

Clerk, U. S. Board of Tax Appeals.

Now August 9, 1929, the foregoing order of redetermination certified from the record as a true copy.

[Seal]

B. D. GAMBLE,

Clerk, U. S. Board of Tax Appeals.

[29] United States Board of Tax Appeals.

DOCKET No. 14,007.

ROLAND P. BISHOP,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ORDER REDETERMINING DEFICIENCY
(ROLAND P. BISHOP).

Pursuant to the decision of the Board promulgated October 4, 1928, the respondent having on

November 8, 1928, filed a proposed redetermination of the deficiency herein and the same having been called for hearing on December 12, 1928, pursuant to notice thereof to the petitioner and no objection having been made thereto, it is

ORDERED AND DECIDED, upon redetermination, that the petitioner's deficiency in tax for the year 1922 is \$2,665.53.

JOHN J. MARQUETTE,

Member, United States Board of Tax Appeals.

Entered Dec. 17, 1928.

A true copy: Teste.

B. D. GAMBLE,

Clerk, U. S. Board of Tax Appeals.

Now August 9, 1929, the foregoing order of redetermination certified from the record as a true copy.

[Seal]

B. D. GAMBLE,

Clerk, U. S. Board of Tax Appeals.

[30] United States Board of Tax Appeals.

DOCKET No. 14,008.

WILLIAM T. BISHOP,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ORDER REDETERMINING DEFICIENCY
(WILLIAM T. BISHOP).

Pursuant to the decision of the Board promulgated October 4, 1928, the respondent having on November 8, 1928, filed a proposed redetermination of the deficiency herein and the same having been called for hearing on December 12, 1928, pursuant to notice thereof to the petitioner, and no objection having been made thereto, it is

ORDERED AND DECIDED, upon redetermination, that the petitioner's deficiency in tax for the year 1922 is \$2,696.94.

JOHN J. MARQUETTE,
Member, United States Board of Tax Appeals.
Entered Dec. 17, 1928.

A true copy: Teste.

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

Now August 9, 1929, the foregoing order of redetermination certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[31] Before the United States Board of Tax Appeals.

DOCKET Nos. 14,006, 14,007 and 14,008.

JOSEPH O. KOEPFLI, ROLAND P. BISHOP,
and WILLIAM T. BISHOP,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF PRESENTATION OF PETITIONS OF JOSEPH O. KOEPFLI, ROLAND P. BISHOP, AND WILLIAM T. BISHOP.

To C. M. CHAREST, Esq., General Counsel, Bureau of Internal Revenue, Washington, D. C., Attorney for the Respondent.

Sir: Please take notice that on this 17th day of June, 1929, the undersigned has presented to this Board and filed with the Clerk thereof the petition of Joseph O. Koepfli, Roland P. Bishop and William T. Bishop, copy of which is annexed hereto, for the review by the United States Circuit Court of Appeals for the Ninth Circuit of the final order and decision of the Board in the above-entitled proceeding.

CLAUDE I. PARKER,

Attorney, Parker and Smith, 808 Bank of America Bldg., Los Angeles, California.

Of counsel:

FRANK G. BUTTS,
910-12 Investment Bldg., Washington, D. C.

Receipt of the above petition acknowledged this
17th day of June, 1929.

C. M. CHAREST,
Esq.,
Gen. Counsel, Bureau Internal Revenue,
Attorney for Respondent.

[32] Filed June 17, 1929.

United States Circuit Court of Appeals for the
Ninth Circuit.

JOSEPH O. KOEPFLI, ROLAND P. BISHOP,
and WILLIAM T. BISHOP,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR THE REVIEW OF DECISION OF THE UNITED STATES BOARD OF TAX APPEALS.

To the Honorable, the Judges of the United States
Circuit Court of Appeals, for the Ninth Circuit:

Joseph O. Koepfli, Roland P. Bishop and William T. Bishop, in support of this, their petition for the review of the decision of the United States

Board of Tax Appeals rendered on the 17th day of December, 1928, determining a deficiency in income and profits taxes of the petitioners for the calendar year 1922 in the respective amounts of \$3,890.38, \$2,665.53 and \$2,696.94, respectfully show to this Honorable Court as follows:

I.

STATEMENT OF THE CASE.

1. On April 22, 1926, the petitioners filed with the United States Board of Tax Appeals in pursuance of the provisions of the Revenue Act of 1926, their petitions requesting the redetermination of deficiencies in income and excess profits taxes for the calendar year 1922, amounting to \$9,371.87 against Joseph O. Koepfli, \$8,147.08 against Roland P. Bishop and \$8,178.47 against William T. Bishop, as shown by the final notices of deficiencies previously mailed by the respondent under date of February 23, 1926. These petitions, which were consolidated for [33] the purpose of hearing, alleged as follows:

That the petitioners were individuals residing in Los Angeles, California, and during the year 1922 they were equal members of the partnership of Bishop & Company, which partnership was engaged in business in Los Angeles, California. During the year 1905 the partnership of Bishop & Company acquired 6.24 acres of land for which it paid \$94,610.74. During the year 1907 the partnership erected buildings on said property at a cost of \$94,-

134.19 and in 1908 and 1909 added other improvements to said property in the amounts of \$5,543.73 and \$21.92 respectively.

That in 1922 the land and buildings were sold by the petitioners for \$500,000.00, the net price to them being \$476,179.90. That said land, exclusive of the improvements, had a fair market value as of March 1, 1913, of \$382,797.80. That the fair market value as of 1913 of the improvements was equal to the cost thereof prior to March 1, 1913, or \$99,699.84.

That the respondent erred in failing to allow as a fair market value as of March 1, 1913, of said land and improvements the values as aforesaid.

2. That thereafter, on or about June 22, 1926, the respondent filed with the said Board its answer to the said petitions which answer admitted that the taxpayers resided in Los Angeles and were equal members of the partnership of Bishop & Company; admitted the acquisition in 1905 by the partnership of Bishop & Company of the said land at the said cost of \$94,610.74; admitted the improvements and the costs of said improvements added to said land in the years 1907, 1908 and 1909 as alleged in the petition. And further admitted that the respondent had mailed to the petitioners notices of deficiency showing the deficiencies as alleged in the petitions for the calendar year 1922 and that the date of mailing of said notices of deficiency was as alleged in said petitions, to wit: February 23, 1926; but denied that said land had [34] a fair market value as of March 1, 1913, of

the amount alleged of \$382,797.80, or that the improvements had a fair market value as of March 1, 1913, of \$99,699.84.

3. The cause being at issue under the rules of practice of said Board upon the filing of such answer, duly came on for hearing on April 11th and 12th, 1928, at which time the petitioners, by competent witnesses, submitted testimony in support of the allegations as aforesaid. Thereafter, on October 4, 1928, the said Board rendered its findings of fact in substantial accordance with the facts as alleged in the petitions and as hereinbefore set forth, further finding, however, that

“The buildings upon the land in 1913 cost \$94,134.19 and \$5,543.73, respectively. The first was erected during the year 1907 and the second during 1908. Presumably, these buildings were subject to depreciation. It is quite evident that, in fixing a valuation as of March 1, 1913, the respondent did compute some depreciation on these buildings; but how much, we are not advised. There is no evidence to indicate what rate of depreciation was used by the respondent, nor whether that was the correct rate. We only know that the respondent determined the land and buildings had a market value March 1, 1913 of \$345,463.54. This was \$37,334.26 less than the value of the land alone, as disclosed by the evidence.

“While it is probable that the buildings had some value on March 1, 1913, the evidence produced fails to touch upon this matter. The

petition does contain an allegation as to the March 1, 1913 value of the buildings; but this is flatly denied in the answer. The burden of proof was upon the taxpayer and he has failed to sustain it. In computing the taxes, therefore, the rate of depreciation of the buildings, already used by the respondent, will stand as correct."

The said Board on the said date also rendered its opinion in which it concluded that, "The amount of taxable gain resulting from the sale of this property should be recomputed based upon a value of \$382,797.80 for the land, plus the depreciated value of the buildings as of March 1, 1913."

On December 17, 1928, the said Board entered its final order of redetermination wherein it determined deficiencies against the [35] petitioners, Joseph O. Koepfli, Roland P. Bishop and William T. Bishop, for the year 1922 in the amounts of \$3,-890.38, \$2,665.53 and \$2,696.94, respectively.

As a basis for its order of redetermination, the Board of Tax Appeals adopted the following recomputation of the capital net gain resulting from the sale of the property which was the subject of the proceeding:

Sale Price of Real Estate	\$476,179.90
March 1, 1913 value of land in accordance with the Board's decision	\$382,797.80
Depreciated value of build- ings as reflected by 60 day letter (See Sched-	

ule 4-I, Pages 26 and
 27 of Revenue Agent's
 Report dated January
 31, 1924, covering in-
 vestigation of Bishop
 & Company for years
 1921 and 1922)\$ 72,036.54 454,834.34

Capital Net Gain\$ 21,345.56

The schedule in the agent's report mentioned in
 the above computation discloses the following
 method used in determining the value of the im-
 provements:

Cost of Building in 1907\$ 89,914.35
 1908 Improvements 5,543.73
 1909 Improvements 21.92

Total cost prior to 3/1/1913\$ 95,480.00
 Minus: Depreciation sustained to
 3/1/1913. (No other evidence avail-
 able) 10,207.80

Fair Market Value as of 3/1/1913\$ 85,272.20
 Plus Improvements since 3/1/1913 to
 date of sale 2,699.88

TOTAL\$ 87,972.08
 Minus Depreciation sustained and al-
 lowed upon the various examina-
 tions 17,167.83

Actual Net Cost of Bldg. 12/31/1921, (No Depreciation is claimed for 1922)	\$70,804.25
Plus—Engine Room, built in 1907 and subject to 5% depreciation.	
[36] Brot. Forward	\$ 70,804.25
Cost in 1907	\$ 4,219.84
Minus: Depreciation sus- tained to 3/1/1913	1,090.13
	<hr/>
Value as of 3/1/1913	3,129.71
Subsequent Improvements ..	14.30
	<hr/>
TOTAL	3,144.01
Minus Depreciation sus- tained and allowed upon various examina- tions	1,911.72
	<hr/>
Net cost as of 12/31/1921 (No depreciation claimed for 1922)	1,232.29
	<hr/>
Total Net Cost of Bldgs.	\$ 72,036.54
	<hr/>

II.

DESIGNATION OF COURT OF REVIEW.

The petitioners being aggrieved by the opinion, decision and order of the United States Board of Tax Appeals and being residents of the city of Los

Angeles, State of California, desire a review thereof in accordance with the provisions of the Revenue Act of 1926 by the United States Circuit Court of Appeals for the Ninth Circuit, within which circuit is located the office of the Collector of Internal Revenue to whom the said petitioners made their income and profits tax returns.

III.

ASSIGNMENT OF ERRORS.

The petitioners, as a basis for review, make the following assignment of error:

1. The Board of Tax Appeals erred in its conclusion of law that "the amount of taxable gain resulting from the sale of this property should be recomputed, based upon a value of \$382,797.80 for the land plus the depreciated value of the buildings all as of March 1, 1913," in that the law does not require that cost of improvements erected prior to March 1, 1913, must be reduced by depreciation accrued to March 1, 1913, and the Board's conclusion should have been that the amount of taxable gain resulting from [37] the sale of this property should be recomputed based upon a value of \$382,797.80 for the land plus the cost of the buildings, all as of March 1, 1913.

2. The Board of Tax Appeals, in its order of redetermination of the tax liability, erred in its computation of such tax liability for the reason that in computing profit on the sale of the 8th and Alameda Street property, said Board reduced the

basic cost of improvements on said property by depreciation accruing prior to March 1, 1913, and such reduction of cost by depreciation accruing prior to March 1, 1913, is contrary to law.

3. If the Board determined that the fair market value of the improvements (buildings) as of March 1, 1913, was represented by their depreciated cost on that date, then the Board erred in failing to compute the profit on the sale on the basis of cost of improvements rather than the March 1, 1913, value since the cost is greater than the March 1, 1913, value, and Sec. 202 (b) of the Revenue Act of 1921 in effect requires that the basis for ascertaining the profit on the sale of property acquired prior to March 1, 1913, is the cost of such property or its fair market value as of March 1, 1913, whichever is higher.

WHEREFORE, your petitioners pray that the decision of the Board of Tax Appeals entered herein against them be reviewed and modified by this Honorable Court and for such other and further relief as the Court may deem meet and proper in the premises.

JOSEPH O. KOEPFLI,
Petitioner.

ROLAND P. BISHOP,
Petitioner.

WILLIAM T. BISHOP,
Petitioner.

By CLAUDE I. PARKER,
Attorney.

PARKER and SMITH,
Attorneys for Petitioner,
808 Bank of America Bldg., Los
Angeles, California.

[38] State of California,
County of Los Angeles,—ss.

Claude I. Parker, being duly sworn, deposes and says: That he is attorney for petitioners and he knows the contents of the foregoing petition and to the best of his knowledge and belief the statements therein are true and that the assignments of error are well taken and intended to be argued.

CLAUDE I. PARKER.

Subscribed and sworn to before me this 29th day
of May, 1929.

[Seal] MARGUERITE LASAGE,
Notary Public in and for the County of Los Angeles,
State of California.

Now August 9, 1929, the foregoing petition ^{is} for
review and proof of service certified from the record
as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[39] United States Board of Tax Appeals.
Filed Jul. 24, 1929.

Before the United States Board of Tax Appeals.

DOCKET Nos. 14,006, 14,007 and 14,008.

JOSEPH O. KOEPFLI, ROLAND P. BISHOP,
WILLIAM T. BISHOP,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

SUPPLEMENTAL PRAECIPE FOR TRAN-
SCRIPT OF RECORD.

To the Clerk of the United States Board of Tax
Appeals:

You will please prepare and, within sixty days from the date of the filing of the petition for review in the above-stated case, transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit certified copies of the following documents:

1. The docket entries of proceedings before the United States Board of Tax Appeals in the case above entitled.
2. Pleadings before the Board.
3. Findings of fact, opinion and decision of the Board.
4. Order of redetermination of the Board.
5. Petition for review.

The foregoing to be prepared, certified, and transmitted as required by law and the rules of the

United States Circuit Court of Appeals for the Ninth Circuit.

Dated: June 21, 1929.

CLAUDE I. PARKER,
B.,
Attorney for Petitioners.

PARKER and SMITH,
808 Bank of America Building, Los Angeles, California.

Of counsel:

FRANK G. BUTTS,
910-912 Investment Building, Washington, D. C.

Service accepted this 19th day of July, 1929.

C. M. CHAREST,
General Counsel.

Now August 9, 1929, the foregoing praecipe certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[Endorsed]: No. 5955. United States Circuit Court of Appeals for the Ninth Circuit. Joseph O. Koepfli, Roland P. Bishop and William T. Bishop, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed September 20, 1929.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.